

(b) (6)

Drift – Trees / Bees

NUMBER: 17L071316

DATE SENT TO INSPECTOR: 7/13/2017

TYPE OF CASE: Drift

COMPLAINANT: (b) (6)

ADDRESS: (b) (6)

APPLICATOR: Blaine Iverson

ADDRESS: (b) (6)

CERT./LIC. # OF APPLICATOR: 11949

DATE COMPLAINT RECEIVED: 7/13/2017

NAME OF PESTICIDE: Trivapro (benzovindiflupyr; azoxystrobin; propiconazole) ;Brigade (bifenthrin)

DATE OF INCIDENT: 7/12/2017

DATE REPORT RECEIVED FROM INSPECTOR: 9/22/2017

SAMPLE COLLECTION NUMBER(S): 9-JL-18; 10-JL-18

SAMPLE LAB REPORT(S): 17R006159; 17R006167

RECEIVED: 8/7/2017

FINDING(S):

<u>Sample</u>	<u>Sample Type</u>	<u>location</u>	<u>Compound</u>	<u>Amount Found</u>	<u>Detection Limit</u>
*Additional Active ingredients found but not requested					
3-JL-18	Plant Leaf		Azoxystrobin	569 ppb	1 ppb
			Bifenthrin	55.4 ppb	5 ppb
			Propiconazole	685 ppb	1 ppb
			*Pyraclostrobin	.79 ppb	
			*Trifloxystrobin	11.10 ppb	
4-JL-18	Plant Leaf		Azoxystrobin	273 ppb	1 ppb
			Bifenthrin	119 ppb	5 ppb
			Propiconazole	219 ppb	1 ppb
			*Pyraclostrobin	1.95 ppb	
			*Trifloxystrobin	2.89 ppb	
5-JL-18	Leaf Material		Azoxystrobin	161 ppb	1 ppb
			Bifenthrin	87.3 ppb	5 ppb
			Propiconazole	114 ppb	1 ppb
			*Pyraclostrobin	2.64 ppb	
			*Trifloxystrobin	1.59 ppb	
8-JL-18	Bees		Azoxystrobin	895 ppb	1 ppb
			Bifenthrin	441 ppb	5 ppb
			Propiconazole	119 ppb	1 ppb
			*Trifloxystrobin	8.66 ppb	

SUMMARY:

On July 13, 2017, Inspector Jeff Lounsbery was assigned to investigate a complaint filed by (b) (6) of (b) (6) alleging an adjacent aerial application damaged her trees and bees.

Lounsbery met with (b) (6) on July 14, 2017, and it was stated that the incident took place on July 12, 2017, from 5:40 pm to 6:00 pm. (b) (6) also stated that aerial applicator is from Crop Care Aerial, LLC of Burbank, SD.

Next Lounsbery met with Blaine Iverson of Crop Care Aerial, LLC. Records show that on July 12, 2017, from 5:30 pm to 6:00 pm, Iverson (b) (6) applied Trivapro (benzovindiflupyr; azoxystrobin; propiconazole) and Brigade 2EC Herbicide (bifenthrin). It was also stated by Iverson that he did not spray the north side of the field 125 feet from the road.

- A check of the weather from the Yankton, SD weather station on June 22, 2017 from 4:56 pm to 5:56 pm indicated the wind was N @ 6.9-9.2 mph.

Video evidence provided by (b) (6) (2:20) ; (3:09), shows that Iverson was making the application more than 10 feet above the crop canopy.

The Trivapro Fungicide label states: **Aerial Spray DIRECTIONS**

Release spray at the lowest height consistent with pest control and flight safety. Do not make applications more than 10 feet above the crop canopy.

Video evidence provided by (b) (6) (2:37), shows that Iverson was making turns over the (b) (6) property, but I cannot conclusively determine from the video if the booms are still on while flying over the property.

Data received from SDSU State Climatologist, Laura Edwards, indicated that the night of July 12, 2017, there was inversion conditions and strong stability in the region.

Iverson indicated that he left a 125 foot buffer from the road; however, Lounsbery took a sample, 4-JL-18, from the edge of the corn field and sample results were found to contain azoxystrobin, propiconazole, and bifenthrin which were applied by Iverson. A voluntary statement sent in by (b) (6) (neighbor) stated, "At times, his wings appeared to be only 25-45 feet away from the power lines on the south side of the road." Video evidence provided by (b) (6) (2:06), shows that Iverson appears to be farther out than 25-40 feet from the power lines. I cannot conclusively determine if the detection of azoxystrobin, propiconazole, and bifenthrin came from a direct application by Iverson or if it resulted from the possible inversion that took place the night of the July 12, 2017.

In conclusion, I cannot conclusively determine how the damage occurred on the (b) (6) property. The wind direction during the time of the application by Iverson was not conducive for drift towards the Jackson property. Data shows that there was a temperature inversion the night of June 12, 2017. Iverson appears to be making an application higher than the 10 feet above the crop canopy.

The Trivapro Fungicide label states: Aerial Spray DIRECTIONS
Release spray at the lowest height consistent with pest control and flight safety. Do not make applications more than 10 feet above the crop canopy.

SUGGESTED ACTION BY THE DEPARTMENT:

Recommend - Pursue a settlement for a violation of 38-21-44(2) against Iverson .

SIGNED: J.D. Farley DATE: 12/21/2017

CIVIL PENALTY CALCULATION WORKSHEET

CASE NUMBER: 1&L071316

RESPONDENT: Blaine Iverson

ADDRESS: (b) (6)

COMPANY/OCCUPATION: Commercial Applicator

PREPARED BY: JD Farley

DATE: 12/21/2017

	Count 1	Count 2	Count 3	Count 4
1. Statutory Violation	38-21-44(2)			
2. Violation Level	7			
3. Base Penalty	\$500	\$	\$	\$
4. Gravity Adjustments				
a. Pesticide Toxicity	1			
b. Human Harm	1			
c. Environmental Harm	1			
d. Compliance History	0			
e. Culpability	2			
f. Total Gravity Value	5			
5. Penalty Adjustment				
a. Percent Adjustment	30 %	%	%	%
b. Dollar Adjustment	\$350	\$	\$	\$
6. Count Penalty (#3 - #5b)	Warning	\$	\$	\$
7. Final Penalty Assessment : \$				
				\$350

PREVIOUS VIOLATIONS				
Date	Case #	Type	Violation	Penalty

17L071316

Write a description for your map.

(b) (6)

(b) (6)

(b) (6)

Inversion
spray id
corn

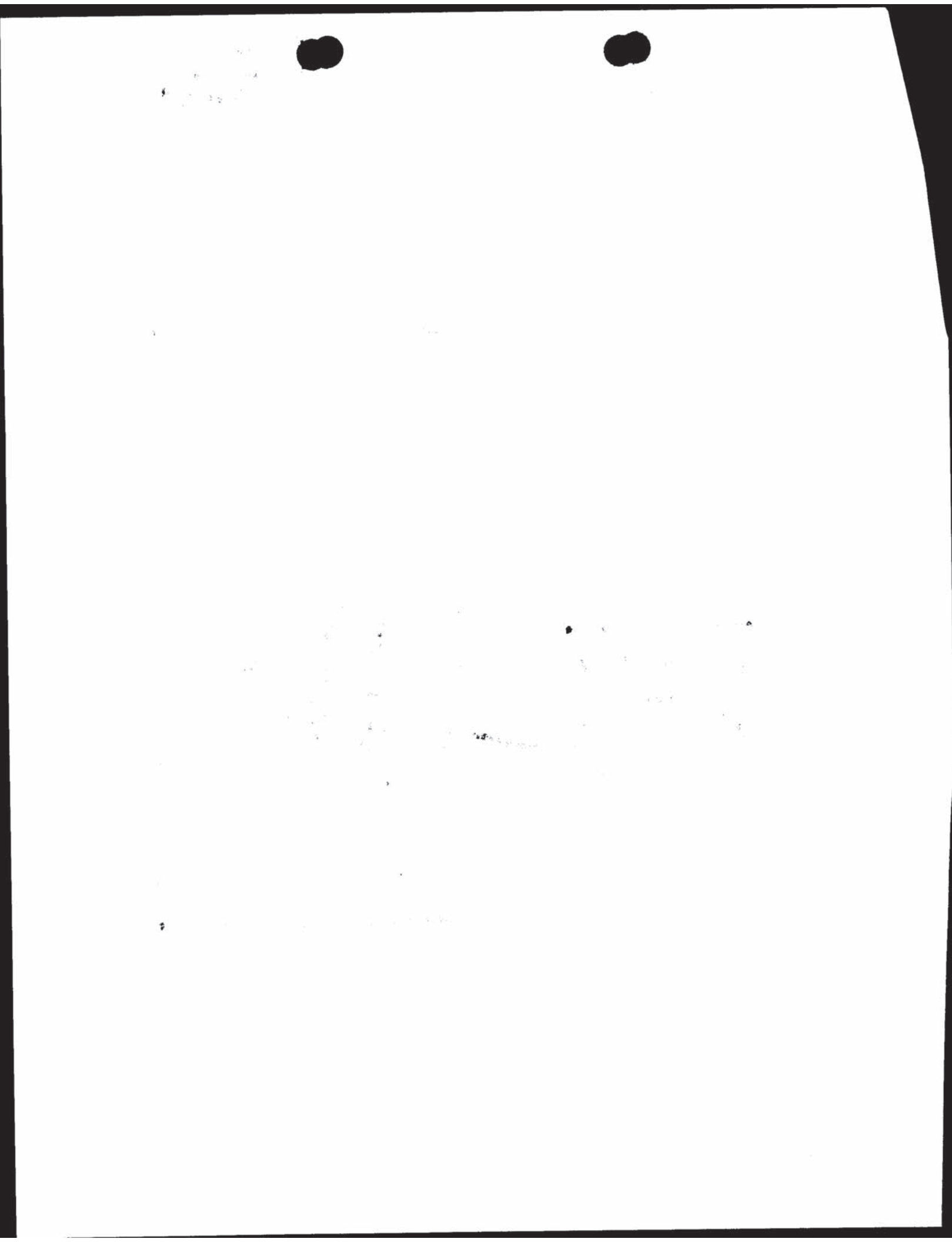
wind



N

Google Earth

© 2017 Google



Farley, Joseph

From: Gere, Tom
Sent: Monday, November 27, 2017 7:57 AM
To: Farley, Joseph
Subject: Fwd: [EXT] video footage from spray incident on July 12th

FYI
Sent from my iPhone

Begin forwarded message:

From: (b) (6) (b) (6)
Date: November 26, 2017 at 7:39:37 PM CST
To: "Tom.Gere@state.sd.us" <Tom.Gere@state.sd.us>
Subject: Fw: [EXT] video footage from spray incident on July 12th

Dear Tom,
Thank you again for meeting with us last week. Here is the link Deputy Secretary Holt requested that will take you to the video and photos of the spray incident and herbicide damage that we shared with you. Please feel free to share with anyone who has interest or involvement in our case review.
I do want to inform you that I reported (b) (6) the farmer, to the EPA for exceeding allowed tolerance levels for azoxystrobin based on the test results that came back Nov. 17th from SD AG Labs collected on July 12th. The test result showed Azoxystrobin at 13.7ppm and the allowed limits for corn forage are 12ppm.
This also will result in another non-compliance for our operation from our USDA NOP certifying agent - MOSA. Once I get the letter of Non-compliance, I will forward that to you.
This is evidence of three federal violations from this incident.

Sincerely,

(b) (6)
(b) (6)

----- Forwarded Message -----

From: (b) (6) (b) (6)
To: (b) (6) (b) (6)
Sent: Sunday, November 26, 2017, 7:18:08 PM CST
Subject: video footage from spray incident on July 12th

<https://drive.google.com/file/d/1h9Gg0Zvaph1IA6gwiZIQF-p5EGG2MqdG/view?usp=sharing>

Farley, Joseph

From: Edwards, Laura <laura.edwards@sdstate.edu>
Sent: Wednesday, December 20, 2017 4:02 PM
To: Farley, Joseph
Subject: Re: [EXT] Temperature Inversion Info

Hi JD,
Well we had to dig into the data a bit since there isn't a weather station right in Vermilion that we could use.

We looked at the hourly data from the SD Mesonet station in Beresford, and also more broadly in the southeast area and over the river to the Nebraska Mesonet.

The weather data for the night of July 12-13, 2017 indicate that inversion conditions and strong stability were in place in the region. Calm winds were measured for at least a couple of consecutive hours, and there was significant cooling after sunset. It is likely that this was a nighttime inversion that dissipated in the morning on July 13. During the daytime on July 13, there was significant warming and mostly clear skies. The data we have show that it was very likely unstable atmospheric conditions. This means that air was generally moving upward (vertically), which could have carried smaller droplets with it. To most people, I could see how it could have looked like good spray conditions. The following night, July 13-14, does not show any indication of inversion conditions as it was a little breezy.

Sorry it took so long to get back to you, but hope this helps.

-Laura

Laura Edwards
South Dakota State Climatologist
SDSU Extension
13 2nd Ave SE
Aberdeen, SD 57401
(605) 626-2870



South Dakota State University adheres to AA/EEO guidelines in offering educational programs and services.



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From: "Farley, Joseph" <Joseph.Farley@state.sd.us>
Date: Tuesday, December 12, 2017 at 11:51 AM
To: Laura Edwards <laura.edwards@sdstate.edu>
Cc: "Farley, Joseph" <joseph.farley@state.sd.us>
Subject: FW: Temperature Inversion Info

Laura,

Was just curious if you have had any luck on retrieving the information on the possibility of a temperature inversion taking place just north of Vermillion.

Thanks,

J.D. Farley
Ag Program Specialist
South Dakota Dept of Agriculture
Division of Agricultural Services
523 E. Capitol Ave., Foss Bldg
Pierre, SD 57501-3182
605.773.4432

From: Farley, Joseph
Sent: Tuesday, November 28, 2017 1:09 PM
To: Edwards, Laura
Subject: Temperature Inversion Info

Laura,

Per our phone conversation this morning, I am looking to receive data on if there was a temperature inversion on July 13, 2017, in the Vermillion area (b) (6). Looking for a possible inversion in the PM hours specifically. Any information would be greatly appreciated and thank you in advance for the help.

Thanks,

J.D. Farley
Ag Program Specialist
South Dakota Dept of Agriculture
Division of Agricultural Services
523 E. Capitol Ave., Foss Bldg
Pierre, SD 57501-3182
605.773.4432

Farley, Joseph

From: Reiners, Bob
Sent: Friday, October 06, 2017 12:03 PM
To: Farley, Joseph
Subject: FW: [EXT] Apiary inspection question

JD,
FYI

From: (b) (6) [mailto:\(b\) \(6\)](#)
Sent: Friday, October 06, 2017 11:57 AM
To: Reiners, Bob
Subject: Re: [EXT] Apiary inspection question

Hello Bob,

I am not the owner, I rent that land where the hives were located and it was certified organic by MOSA. I have a copy of the rental agreement with the (b) (6) (b) (6) provided me a large bottle of honey and I am sending it in for testing for the same chemicals that turned up positive in my lab tests found in Trivapro and Brigade EC. I live in the house directly to the west of the hives. That pasture land tested slightly above the EPA tolerance level for Propiconazole on pasture grass. I have submitted those results to J.D. Farley. I have copies of all the reports. Thank you. As a result, a federal mandated investigation by the NOP certifier was completed and I lost all my organic certification on all that land where the bees are located and my land for 3 years. The limit for honey is not listed in the federal registrar for propiconazole, but I want to test it anyway to see where it is. I am glad to see that bees were not as negatively affected as they could have been. Since, I already owe SDSU Ag Labs \$7,918 in testing fees for my own land and the (b) (6) I am sending the honey to a an out-of-state accredited lab that can test food for pesticide residues. I talked to (b) (6) at length on Wednesday and he explained how he knew you. (b) (6) is raging mad at what happened to me, and as another beekeeper, he is standing behind my efforts to do something. I was an organic inspector and lead auditor for the organic industry for 10 years, so I understand the importance of a good investigation. Thank you for your time.

Sincerely,

(b) (6)

On Fri, Oct 6, 2017 at 9:58 AM, Reiners, Bob <Bob.Reiners@state.sd.us> wrote:

Hi (b) (6)

Were you the property owner where (b) (6) had the bees placed? I assisted the pesticide inspector with collecting dead bee samples from in front of the hives. I also conducted my routine apiary inspection while I was present. Thank you. Bob

From: (b) (6) [mailto:\(b\) \(6\)](#)
Sent: Thursday, October 05, 2017 3:17 PM
To: Reiners, Bob
Subject: Re: [EXT] Apiary inspection question

Bob,

One more question, during the apiary inspection for (b) (6) back in July in Vermillion, did you collect honey or pollen for pesticide residue testing?

Sincerely,

(b) (6)

On Oct 5, 2017 10:35 AM, "Reiners, Bob" <Bob.Reiners@state.sd.us> wrote:

Hi (b) (6)

Please find attached a Clay County printout. If you have any questions, please feel free to contact me. Bob

Bob Reiners

State Apiarist

Agricultural Services

Pierre, SD 57501

Phone: [\(605\) 773-3796](tel:(605)773-3796)

Fax: [\(605\) 773-3481](tel:(605)773-3481)

Email: Bob.Reiners@state.sd.us

Farley, Joseph

From: (b) (6) (b) (6)
Sent: Wednesday, October 04, 2017 1:04 PM
To: Farley, Joseph
Subject: [EXT] (b) (6)
Attachments: BEFOREAFTER.png

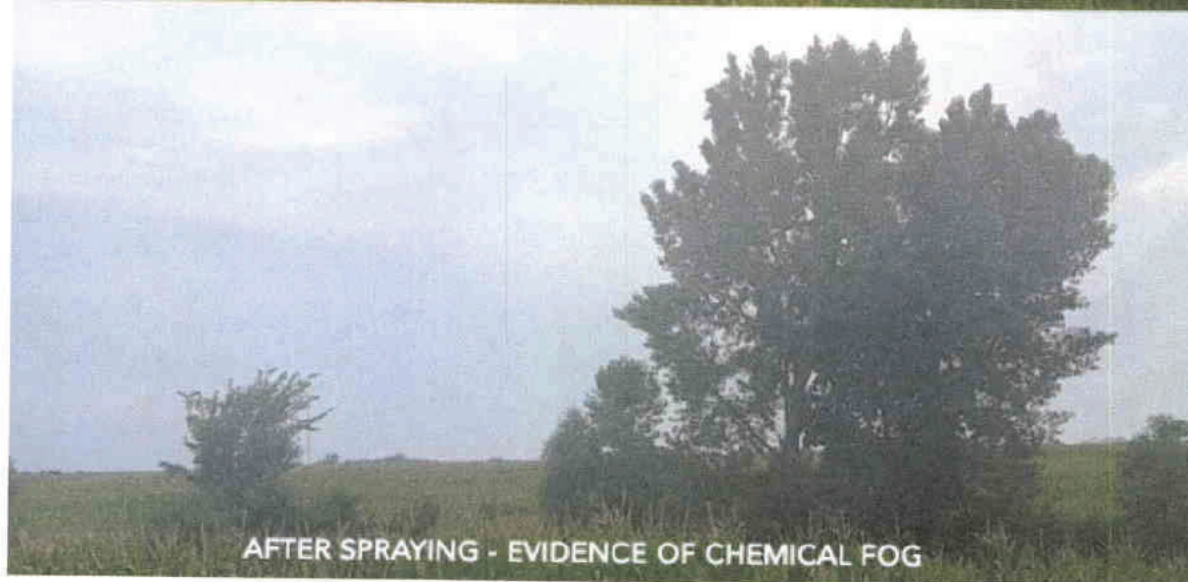
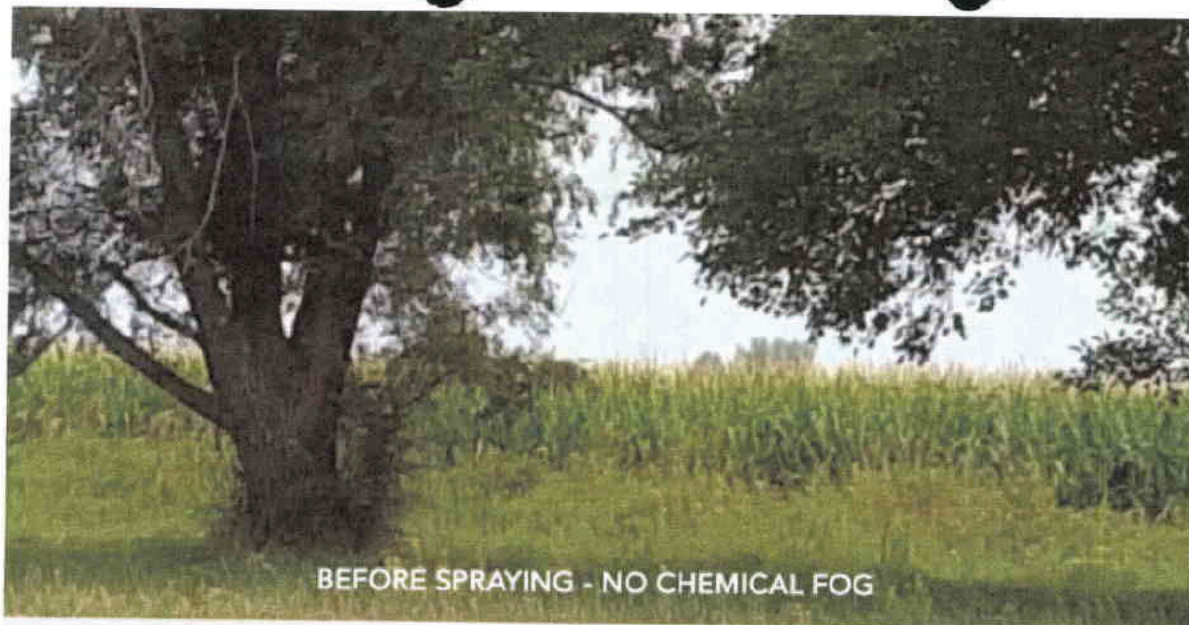
Hello JD,

Thanks for hearing me out today. My stress level is very high with this situation. (b) (6) today, states that he is not at fault and is basically not going to do anything with his insurance company. He told (b) (6) (b) (6) that if the state collected test results come back positive and the results of your investigation show he is at fault, then he may change his mind. Everything rests on you now! We need that report back as soon as possible now. The attorney is going to charge tremendously if we have to hire our own investigator.

In the meantime, I am approaching our eye witness neighbor who was outside with us to obtain her written testimony. In my opinion, he was engaged in reckless flying behavior that day and he was within 75 feet of my mailbox with the plane! In my opinion, there is no way we could have tested that high on Propiconazole unless one or all four things were true:

- 1) he was releasing chemical within 50 feet of the road and very close to my house
- 2) the wind was from the east or south
- 3) the chemical mix was higher than he stated
- 4) the heat shield above the corn was so high that the chemical vaporized into a heavy fog and came right to us. It appears to us that it never settled on the corn.

Attached



My attorney is (b) (6)

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Case File Checklist
(For interoffice use - Confidential)

Does the case file contain the following?

	<u>Yes</u>	<u>No</u>	<u>N/A not applicable</u>
Pesticide Notice of Inspection	(X)	()	()
Use/Misuse Inspection report	(X)	()	()
Sprayer setup?	()	()	()
Direction traveled?	()	()	()
Samples/Sample collection report	(X)	()	()
Properly sampled?			
Damage complaint form	(X)	()	()
Spray Reports	(X)	()	()
Voluntary Statements	(X)	()	()
Case narrative	(X)	()	()
Witnesses/Voluntary Statements	(X)	()	()
Weather data	(X)	()	()
Photographs	(X)	()	()
Pesticide labels	(X)	()	()
Discharge Response Plan	()	(X)	()
Document complainant applications	(X)	()	()
Maps	(X)	()	()

Follow up assignments:

Comments: _____

Case # 17L071316

Reviewed by: JD Farley

Date: 11/1/2017

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17L071316
(b) (6) vs. Crop Care Aerial LLC
Vermillion SD

On July 13th I was notified by J D Farley, SDDA Program Specialist of a pesticide drift case located at (b) (6). The complainant was (b) (6) who is a resident at the above listed address.

On the morning of July 14th I talked to the complainant and set a time for initial investigation of 2:45 PM yet that day. That afternoon I arrived at the (b) (6) residence (b) (6). I presented my credentials to (b) (6) and at that time she signed a pesticide notice of inspection. She also completed a voluntary statement at that time. (b) (6) explained the drift incident and showed me the areas of her property that were affected. At that point I took several pictures of the property and a sample from the trees and bushes south and west of the home.

According to the voluntary statement provided by the complainant dated 7-14-17 the drift incident took place on July 13th between 5:40 and 6:00 PM. The statement says that the pesticide drifted from the target area south of the (b) (6) property to the north. It goes on to state that (b) (6) (b) (6) pets, chickens, home and equipment were exposed to a fog of vapor. (b) (6) (b) (6) explains in her voluntary statement that she and her husband experienced multiple physical discomforts including rashes, headaches, upset stomach, sore throat and eye irritation. The (b) (6) property is registered on the SD sensitive website and is also certified organic through MOSA. According to (b) (6) the aerial applicator flew over the (b) (6) property twice, the first time right over the trees west and south of the house. (b) (6) indicated that the aerial applicator in this incident was Crop Care Aerial, LLC of Burbank SD. (b) (6) also said that the bee hives NE of their residence may have been adversely effected by the drift. At that point Bob Reiners, SDDA Apiary Specialist was contacted to conduct a possible bee kill investigation.



To the left the area south and west of the (b) (6) home. The corn field where the aerial application took place can be seen in the background. Sample 03JL18 (7-14-17) came from the trees and bushes in this picture.

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Above the meadow area east of the (b) (6) home. This area along with all other property is certified organic for the production of eggs and chicken. The treated corn field is across the road south of this property. Picture facing south.



Looking north at the (b) (6) home. This picture is taken from the ditch area.

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To the left facing west on (b) (6) The driveway to the (b) (6) property can be seen middle right. To the left highline wires in the south ditch and trees in a low area that separates the sprayed corn field NW to SE. See maps for more detail.



(b) (6) Left, a picture of the (b) (6) driveway. Looking north.



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Div. of Ag Services

Standing in the approximate same location as the previous picture (b) (6) looking east. The highline wires separate the treated corn field from the south ditch. The trees in the lower non-crop area that can be seen in the first picture on this page are located directly to my right. According to a verbal statement given to me by Crop Care Aerial pilot- Blaine Iverson, the north 125ft. of the corn field had no pesticide applied to it. Sample 04JL18 was taken from this part of the corn field east of the non-crop area pictured above.

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To the left the bee hives located NE of the (b) (6) residence.



Upon closer inspection of the bees there was much activity on the outside of the hives. Some dead bees can be seen directly in front of the hive in the center of the picture.

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On Tuesday July 18th I met with Crop Care Aerial LLC owner, Jeff Mount and pilot, Blaine Iverson. Mr. Mount signed a pesticide notice of inspection at that time. Mr. Iverson signed a voluntary statement and both individuals provided me with the necessary information needed to complete a pesticide use inspection report. According to spray records provided Mr. Mount the NW ¼ (corn) (b) (6) (b) (6) was sprayed with trivapro fungicide and brigade insecticide on Wednesday July 12th. Blaine Iverson was the applicator and the time was 5:30-6 PM. Weather history for that day shows that the wind was out of the north @ 7-9 mph. The temperature was 84 F and the humidity was 47%. Total dilution per acre delivered was 2 gallons at 100 mph and a pressure of 30 psi. Per phone on July 17th, Mr. Mount indicated that he and Mr. Iverson were both aware of the sensitive site registry and the fact that the (b) (6) property was listed on it. Mr. Iverson indicated that he did not spray the north 125 feet of the

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corn field in order to leave more room from the application to the (b) (6) property. Both individuals were cooperative throughout my interview process which concluded at 2:45 PM.



To left Bob Reiners SDDA, prepares to check bee hive health NE of the (b) (6) property. 7-19.



Mr. Reiners, SDDA Apiary Specialist retrieves some dead bees from around one of the hives. Sample 08JL18 included approximately 1/3 qt. jar of dead bees from 3 hives at this location.



To left Bob Reiners checks hive health. According to his expertise these hives were in excellent health and very normal in their hive activity.

Submitted, SDDA Inspector
Jeff Lounsbury

9-22-17

(b) (6)

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